

RESPONSE TO:
DISCUSSION ITEMS RECOMMENDATIONS CAUTIONS
(City Response in Italics)
E&SC Work Group Members
August, 3, 2006

HBAL Office

Preface Comment:

Q: Whatever recommendations and regulations are approved will have a similar impact on the commercial side as on the residential side.

A: Yes similar.

Q: These final regulations should be extended throughout Lancaster County.

A: The City's program can only extend to the City Limits based on our municipal permit. The County is responsible for their own requirements.

Q: What's the City's "read" on the potential for a Phase III program?

A: NDEQ has indicated that Phase III may be implemented in the 2010-2014 timeframe and would require treatment of stormwater, which would be extremely costly. They have also suggested that if communities do a good job in Phase I and II, they may not be required to get a Phase III permit.

Meeting No. 1 Summary, Erosion and Sediment Control Work Group.

Q: The Purchase Agreement must contain clear and adequate language for builders to understand the intentions of the developers when purchasing lots. HBAL is willing to work with the City to provide E&SC purchase contract language.

A: This would be an integral part of managing a successful E&SC small sites program with oversight from the development community.

Q: Work group did not feel that the deadline set for the end of this calendar year is realistic. To get regulations that address the issues and encourage support may take this process into mid-winter.

A: The City started the E&SC review process in the Fall of 2005. It was our goal to update ordinances and the overall program by the end of 2006. NDEQ has recently stated that the ultimate deadline for the City is the end of the 5-yr permit period: Aug 31, 2007. This will provide greater flexibility to address the issues as needed. It is still important to complete a program plan by the end of 2006 in order to identify resources for the '07-08 budget process and to have time in 2007 for the process of preparing and adopting ordinances prior to the deadline.

Term and Definitions:

Q: Clarify the definition of a **builder**. Could it be an **individual homeowner**?

A: The term builder will include a reference to “person.” The definition of person will be drafted to include a reference to the “individual owner.”

Q: Director of Public Works... “or acting in the position of Public Works Director”

A: The Public Works and Utilities Director may assign an individual(s) to act on the Director’s behalf.

Work in Progress, July 21, 2006:

No comments:

E&SC Program Resources, August 1, 2006:

Draft Program Elements:

Q: Is this level of oversight required? Even though 1,270 additional building sites added to pool of sites, the current inspection staff should be able to schedule themselves to accommodate these numbers unless there is a substantial increase in the number of complaints.

A: We received and responded to about 100 complaint calls for the construction sites (177 if repeat calls are included). Based on past years’ number of complaints, adding 1,270 sites will increase the complaint load greatly. Complaints require a trip out, a verification of a complaint, inspection, trip back, filing of paper work, sending a letter of complaint, a possible re-inspection (another trip out and back and associated paperwork).

Failure to act on complaints creates a potential liability issue for the City. An additional workload to follow up on complaints without additional staff cannot be absorbed without a negative impact to persons receiving other services.

Enforcement Oversight:

No comments.

SWPPP/Reinspection Fees:

Q: The fees are excessive.

A: The fees are consistent with what other communities charge and reflect the costs of the additional workload.

Q: Who receives the fees?

A: The fees go to the division that is providing support for oversight of the E&SC program.

Q: Are there any additional fees for the home builder?

A: A re-inspection fee is proposed if non-compliance issue exists.

Q: Consider automatic approval of SWPPP after 10 working days

A: If all of the SWPPP requirements are met.

City/NRD Staff Resources Needed:

Q: What are other similar-sized cities doing?

A: Municipal E&SC enforcement varies from minimal to tightly regulated. Some municipalities offset the cost for the program through stormwater fees. E&SC program staff varied from 2 to 7 FTEs.

Q: How can this program be developed to eliminate the need for 1.5 additional FTEs?

A: City oversight and record keeping for the program is a federal requirement. In addition to the inspections, the complaint process to follow up on calls from the public does consume large blocks of time. To make the program equitable, inspections, complaint follow up and record keeping are tangible tasks that are unavoidable and require time to conduct.

E&SC Program Outline, August 1, 2006:

1. Q: This change from present program needs clarification. The developer submits SWPPP for total development AND a mini-SWPPP for each “individual building lot.” Can Building and Safety provide the mini- SWPPP template for each lot when the builder takes possession of the lot? How can the developer know what is happening on each lot until the builder submits an approved plan?

A: The City/NRD can provide a mini-SWPPP type of template that addresses the measures that need to be in place on small sites. It will look similar to the example on Pg 7 of the Twin Cities Field Guide. It will be the developer’s responsibility to include a mini-SWPPP template on the overall SWPPP plan. The builder will be required to complete the details that are lot-specific, primarily a diagram demonstrating how and where erosion control measures will be placed. Until the builder pulls a building permit, the developer would be required to do weekly inspections of the subdivision to assess the current situation (as required in their SWPPP).

2. Q: What constitutes an inspection and what is the detail required for an inspection. If there has been no rainfall, there should be no erosion activity. With no rainfall, can the inspection simply be “No Changes”?

A: An inspection can simply specify that the measures are in place and do not require maintenance. Even though it is dry or snow is on the ground this will do, but it must be an accurate representation of the existing conditions. Inspection must be completed according to the SWPPP.

Q: The NDEQ proposed 7-day inspection is not necessary. A ½ inch rainfall triggers an inspection. We propose having the required inspection (unless a triggering rain event) at 28 – 30 day intervals.

A: This is an issue for NDEQ and not the City as NDEQ has set this level of regulation according to the federal requirements.

3. Q: We question the subdivider taking responsibility for the SWPPP and mini-SWPPP as cited in #1.

A: It was the City’s understanding that the subdivider (developer) in addition to managing their SWPPP for the large site, would also manage the mini-SWPPP for the small sites in order to reduce City resources needed for the program. If this is different than the “proposed plan” we need to clarify what is being proposed by the working group.

4. Q: Clarification needed here. The builder completes mini-SWPPP and plot plan provided by the developer. Earlier it was stated that the developer completes the SWPPP and mini-SWPPP for each lot. Is the builder simply transmitting the developer's original mini-SWPPP to B&S for permit issuance?

A: The developer stabilizes the lot before sale to the builder. The builder completes a mini-SWPPP that is lot-specific (using the template provided by the developer). The developer reviews the mini-SWPPP, keeps a copy for construction oversight. Builder provides a copy to B&S with the building permit and provides the developer with an updated mini-SWPPP if changes are necessary.

Q: In the "Changes from the present program," is the "copy" the mini-SWPPP or the permit? If the SWPPP, could it be maintained on the building site after framing is complete? The original plans are at B&S, the street signs are posted and the address is on the house.

A: The copy of the mini-SWPPP is needed to get the building permit, the mini-SWPPP is not a permit. The original/working version of the mini-SWPPP is to be on the site. B&S only gets a copy of the Mini-SWPPP.

Q: The SWPPP is a "living document." How can it be on site? It's "living" at B&S.

A: Again the original/working version of the mini-SWPPP is to be on the site. B&S only gets a copy of the Mini-SWPPP.

5. Q: To deny a certificate of occupancy means some builders can't close the sale on some loans, especially those of a special Federal nature. Is there a better option than denying occupancy?

A: If the builder indicates in the mini-SWPPP that stabilization is being done by them after the home is sold that would provide a paper trail for enforcement.

Q: How should stabilization be addressed in the winter months with frozen ground?

A: Sites can be stabilized as soon as the ground is no longer frozen. DEQ is proposing only monthly inspections for temporarily stabilized sites and sites with frozen ground conditions.

Enforcement:

1. Q: We agree that corrections need to be swift; however, with paperwork moving from one agency to another, it may be days or a week before the developer or builder is notified of necessity for corrections. Is seven days practical or is seven days after notification what you're trying to achieve? What are other similar-sized cities doing for corrections?

A: Most municipalities we polled require 7 days or less.

Q: There are concerns over the term "E&SC Inspector." Is this a new position?

A: Currently we have two persons trained in E&SC to conduct inspections. There is a certified program that is in the works to certify a person as an E&SC inspector. Any additional staff needed for small sites oversight would be trained in E&SC.

Q: Clarify the fines. Why are fines increased from \$100/day to \$500/day? To whom are the fines paid? EPA? DEQ? B&S? If the fine applied after the seven-day period for corrections?

A: The fines are being increased to be equal to those capable of being sited by B&S. All fines go to Lincoln Public Schools.

2. Q: In the building phase, are five working day's sufficient time for correction? In development phase, the recommendation is for seven days.

A: The request for 5 working days is essentially 7 calendar days. Individual sites are much more easily corrected than much larger sites.

Q: If a builder purchases a block of lots within a development, how are the permits pulled? If one of the lots needs corrections, does this jeopardize the entire block?

A: If the block is contiguous and is for one acre or more, the builder could submit an NOI and SWPPP for the contiguous lots. The developer would no longer have a responsibility for those lots. If one lot owner in the "block" was not willing to comply, it would be on the NOI holder to achieve compliance. If the "block" is not contiguous, it's lot by lot.

Q: Building inspectors will notify City/NRD if measures not in place. Building inspectors can perform inspections as they inspect other aspects of the building. How will they be trained to be consistent across the City? How can inconsistencies be addressed and remedied?

A: Building inspectors could make a determination of the measures not being installed or damaged. Any other question of determination would go to the City/NRD. To retain consistency on determinations for violations and requirements for corrections, PWU and the NRD would make those determinations.

Ordinance Revisions:

3. Q: Question about out-of-town developers or builders who may go out of business. What remedies to the developer of record?

A: Responsibilities would default to the owner of the property.

4. Q: (City must retain ability to take direct action against the owner/builder). Is there a conflict between (3) and (4)? Does this conflict with EPA and DEQ?

A: The developer manages the small sites until the entire development is 95% permanently stabilized, the NOI agreement/regulations would be enforced. An ordinance would be created requiring E&SC measures to be installed on the small sites.

5. Q: Note: We're curious as to what the new code revisions will be.

A: When the program elements are finalized and a draft is completed the code revisions will be made available on the web with notice to the working group.

E&SC Program Education Outline, August 1, 2006

1. Q: Do create a field guide. HBAL would be willing to help develop this document.

A: Very good.

2. Q: What are other similar cities doing for their mini-SWPPP?

A: Other municipalities require a plot plan with measures and a small narrative.

3. No suggestions

4. Q: We encourage caution with this suggestion although some type of training and certification program probably will be mandated and we would want to be involved in developing one prior to any mandates.

A: Mandatory E&SC training for placement, installation and maintenance of measures with some type of prerequisite for a building permit was suggested by the builders. We would expect HBAL to be greatly involved with this process as well as No. 5

5. Encourage City to move in this direction.

Final comments:

Comment: Developers estimated the cost of these anticipated regulations. With fees, silt fence, rock entryway, site inspections, etc. it will add 1.5% to the average new home. The dollar fee comes to \$1,750 to \$2,100 per lot. National statistics indicate that for each \$1,000 in added costs to a home, 400,000 people in the US are unable to afford that home. A percentage of those people live in Lincoln.

Reply: Not all municipalities require full perimeter measures or mandate rock drives. Some BMPs can be traded (i.e. weekly street sweeping for an entire area in lieu of rock drives). Options are open as long as it can be shown that the measures implemented are achieving compliance with the SWPPP.

Comment: A developer posed this scenario: A 100 acre development has a creek on one end. All the roads drain to one detention pond. Would it not be more cost effective to let the dirt drain into the detention pond and then dredge out the pond when the construction is complete?

Reply: Up until the time the streets are paved a catch basin can work very well. After the streets are paved this area now becomes the public right-of-way and tracked mud can become a safety hazard and a nuisance to home owners in areas in or adjacent to areas under construction. This conflicts with standards for keeping sediment out of the public ROW.